

COMMONWEALTH OF KENTCKY  
CAMPBELL CIRCUIT COURT  
I DIVISION  
CASE NO. H-CI- 89

JAN 18 2002

SAS

CHARLIE COLEMAN,JOHN P. ROTH JR AND ERIK HERMES,  
ON BEHALF OFTHEMSELVES AND OTHERS  
SIMILARLY SITUATED

PLAINTIFFS

V.

CAMPBELL COUNTY PUBLIC LIBRARY  
BOARD OF TRUSTEES

DEFENDANT

Serve: Robert Jennings/Agent  
3 Whispering Woods Lane  
Alexandria, Kentucky 41001

*By Certified Mail*

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CLASS ACTION COMPLAINT WITH JURY TRIAL DEMAND AND  
DECLARATION OF RIGHTS

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Come now the Plaintiffs, Charlie Coleman, John P. Roth, Jr. and Erik Hermes, on behalf of themselves and others similarly situated, and for their Class Action Complaint filed herein states:

STATEMENT OF THE CASE

1. Plaintiffs are residents and property owners in the County of Campbell, Commonwealth of Kentucky and bring this class action against the Campbell County Public Library, Board of Trustees for the unlawful property tax increases, which per Kentucky Revised Statutes, required 51% of the number of duly qualified voters voting in the last general election to submit a petition for an increase in the property tax rate. This action is brought both for a refund of unlawfully charged and collected ad valorem taxes, as well as for injunctive relief to prohibit future unlawful tax increases. Finally, this

action is brought as a Declaration of Rights for a determination that the specific provisions of KRS Chapter 173, pertaining to libraries and the respective manner in which tax rates are set applies, not the general provisions found in KRS Chapter 132. Specifically, for the tax year 2010, the Defendant Library charged a tax of \$0.72 per thousand on \$5,282,137,213, equaling \$3,803,138.79. The Defendant Library should have only taxed \$0.30 per thousand on \$5,282,137,213, equaling \$1,586,644.16. The Plaintiffs and all other Campbell County taxpayers are owed a refund of \$2,218,497.83 for year 2010 alone.

### **PARTIES**

2. Plaintiffs, Charlie Coleman, John P. Roth, Jr. and Erik Hermes, are residents and property owners in Campbell County Kentucky. Furthermore, Plaintiffs have paid property taxes to the Library, as set forth on their yearly county tax bill. Plaintiffs' properties are located as follows, Charlie Coleman 10 Stonegate, Alexandria, Kentucky, John P. Roth, Jr., 4566 Winters Lane, Cold Spring, Kentucky, Erik Hermes, 6163 Cabin Creek East Drive, Cold Spring, Kentucky.

3. Defendant, Campbell County Public Library, Board of Trustees (hereinafter "Library") is a district duly organized under the laws of the Commonwealth of Kentucky, which was organized prior to July 13, 1984.

### **FACTS**

4. The Plaintiffs and the class they seek to represent are residents and property owners who have paid Library taxes, which were increased in the years

5. The Library was organized prior to July 13, 1984, pursuant to KRS Chapter 173.

6. Pursuant to KRS 173.720 the Library was established on September 5, 1978, having been formed by Petition.

7. KRS 173.790 governs the increase or decrease in any tax levy. Specifically, that the ad valorem tax rate “shall not be increased or decreased unless a duly certified petition requesting an increase or decrease in the tax rate of a specifically stated amount is signed by fifty one (51%) of the number of duly qualified voters voting in the last general election...”

8. Attached as Exhibit A , is the resolution passed by the Campbell County Fiscal Court, acknowledging the requisite signatures on petitions presented for the establishment of the library and setting an ad valorem tax rate as \$0.03 per \$100 of property value. This equates to \$0.30 per \$1,000 dollars of value, i.e. \$30 of tax on a \$100,000 home.

9. Based on records obtained from the Campbell County PVA from 1994-present, the Library has set the following rates per \$1,000 dollars of value.

2011	\$0.457
2010	\$0.72
2009	\$0.68
2008	\$0.65
2007	\$0.64
2006	\$0.64
2005	\$0.63
2004	\$0.63
2003	\$0.63
2002	\$0.53
2001	\$0.53
2000	\$0.53
1999	\$0.516
1998	\$0.416
1997	\$0.405
1996	\$0.395
1995	\$0.384
1994	\$0.38

10. Said rates are in well excess of the authorized \$0.30 per \$1,000 resulting in many years with the rates being double than the petitioned/agreed upon rate as submitted to the Campbell County Fiscal Court by the electorate. As set forth above, Plaintiffs and the Class of Taxpayers are owed a refund of \$2,218,497.83 for the year 2010, as well as all other years.

11. The Defendant Library has unilaterally chosen to not comply with applicable law, with wanton/reckless disregard to the rights of the Plaintiffs and the property owners of Campbell County.

12. The Defendant Library has not complied with the provisions of KRS 173.790 for said increases.

13. The Defendant Library asserts that the commonly referred to House Bill 44, authorizes the library to increase taxes.

14. House Bill 44 does not specifically address the Defendant Library. House Bill 44 is codified in KRS Chapter 132.

15. More importantly, KRS 173.790 is specific and unambiguous, requiring a specific statutorily created mechanism for the Defendant Library to increase tax rates.

16. Kentucky Supreme Court has repeatedly been asked to interpret statutes that present a conflict and apply a rule of statutory construction that the more specific statute controls over the more general statute. *Light v. City of Louisville*, 248 S.W.3d 559, 563 (Ky.2008).

17. This action does not involve a conflict, but rather a complete disregard of a specific statute, KRS 173.790, by the Defendant Library. Said conduct amounts to an unlawful taking.

18. The Defendant Library in increasing taxes, without following specific statutory framework for said increase, blatantly refused to comply with state law.

### **CLASS ACTION ALLEGATIONS**

19. The Plaintiffs bring this action as a class action against the Defendant pursuant to Rule 23 of the Kentucky Rules of Civil Procedure. Plaintiffs seek certification of the following class:

All property owners/or taxpayers, who have paid Campbell County Library taxes in excess of the last lawfully set rate set by certified petition.

20. The class definition encompasses in excess of Ten Thousand (10,000) residents/taxpayers who were charged, by Defendant Library, a tax increase never properly enacted. To Plaintiffs' knowledge the number of residents/taxpayers victimized is equal to all properties and tangible property within the County of Campbell.

21. Despite the size of the class, the identities of the class members can be ascertained from the records and files of the Campbell County PVA/Campbell County Fiscal Court. Plaintiffs and their counsel do not anticipate any difficulties in the management of this action as a class action.

22. The interests of the Plaintiffs are coincident with and not antagonistic to those of the other members of the class.

23. The named Plaintiffs are members of the class and will fairly and adequately assert and protect the interests of the class. Plaintiffs have retained counsel with extensive experience in class action litigation.

24. Common questions of law and fact predominate over any questions affecting only individual members of the class. Common questions include but are not limited to the following:

- a. Did the Library violated KRS 173.790?
- b. Did the Library have the authority to raise the ad valorem rate pursuant to KRS Chapter 132, or does the specific KRS 173.790 apply?
- c. Should the Library be enjoined from further violations?
- d. May the Library increase the ad valorem rate without complying with KRS 173.790?
- e. Is Plaintiff and the class of persons they seeks to represent entitled to a refund of all property taxes paid in excess of the rate established by resolution \$0.30 per thousand of value and if so for what period of time?

25. Defendants have acted or refuse to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

26. A class action is superior to other available methods for the fair and efficient prosecution of this action.

27. The certification of a class would allow litigation of claims that, in view of the expense of litigation, may be insufficient in amount to support separate actions.

**FIRST CAUSE OF ACTION  
DECLARATORY JUDGMENT AGAINST DEFENDANTS CONCERNING THE  
ASSESSMENT AND COLLECTION OF AD VALOREM TAXES IN EXCESS OF  
THE RATE ESTBLISHED BY KRS 173.710-800**

28. The Plaintiff incorporates all allegations in the Complaint.

29. As set forth above, the Library was established pursuant to KRS 173.720, with a petition being presented to the Campbell County Fiscal Court and a resolution adopted establishing the Library and adopting a tax rate of \$0.30 per thousand dollars of value.

30. KRS 173.790 governs any increases or decreases to said rate. Since adoption, the rate has increased, without following the petition requirements set forth by law.

31. The actions of the Defendant Library in assessing and collecting an ad valorem tax in excess of \$0.30 per \$1,000 of value is in violation of KRS 173.790.

### **SECOND CAUSE OF ACTION CONVERSION AGAINST THE DEFENDANTS**

32. The Plaintiffs incorporate all allegations in the Complaint.

33. The Plaintiffs and all members of the class were assessed and forced to pay taxes in excess of the approved rate. In the event of non-payment, Plaintiffs were threatened with interest at the rate of 12%, numerous fees to the County Attorney, Sheriff and Clerk and foreclosure.

34. The Defendant Library lacked the authority to issue a bill in excess of the approved rate, but nonetheless did so under the aforementioned threats of collection.

35. The Defendant Library converted Plaintiffs and all other taxpayers' monies under the guise of lawful property tax. Defendant Library has exercised and continues to exercise dominion and control over Plaintiff and all other taxpayers' money.

36. Defendants actions constitute common law conversion.

37. As a direct and proximate cause of the Defendants' conversion, the Plaintiffs and all members of the class have been injured. The injuries include loss of personal funds billed unlawfully by the Defendants.

### **THIRD CAUSE OF ACTION UNLAWFUL TAKING PER 42 U.S.C. SECTION 1983**

38. The Plaintiffs incorporate all allegations in the Complaint.

39. Defendants acted under color of law in issuing tax bills and forcing payment by the Plaintiffs for taxes not authorized by law.

40. The Plaintiffs and other members of the class under the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution are protected from unlawful takings by the government.

41. Defendant Library acted under color of law, in issuing tax bills and forcing payment, under threat for non-payment, to unlawfully take property belonging to the Plaintiff and other members of the class.

42. Defendants actions complained of herein violated the 5<sup>th</sup> and 14<sup>th</sup> amendments of the United States Constitution, as well as 42 U.S.C. Section 1983, entitling Plaintiffs and other members of the class to attorneys' fees and costs, in addition to the damages complained of herein.

#### **FOURTH CAUSE OF ACTION UNJUST ENRICHMENT/RIGHT TO REFUNDS**

43. The Plaintiffs incorporate all allegations in the Complaint.

44. The Plaintiffs and the members of the Class have paid taxes to the Defendant Library, well in excess of those allowed by law.

45. The Defendant Library has been unjustly enriched by said excess tax collection.

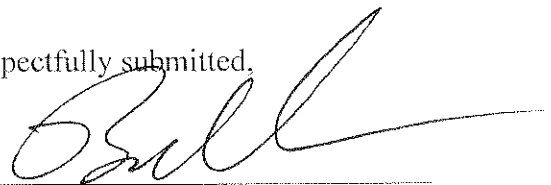
46. The Plaintiffs and the Class of Taxpayers are owed a refund for all taxes paid in excess of the statutorily authorized amount provided for in KRS 173.790.

***WHEREFORE***, Plaintiffs, on their behalf and on behalf of all others similarly situated, demand judgment against the Defendant Library and specifically request:



1. Mandatory injunctive relief requiring Defendants issue refunds for taxes billed and collected in excess of the statutorily approved rate of \$0.30 per thousand;
2. Mandatory injunctive relief preventing the Defendant Library from increasing its tax rate unless the provisions of KRS 173.790 are complied with;
3. Judgment and award of compensatory damages, in the form of refunds, with interest, against the Defendant Library in an amount to be determined by the finder;
4. For a declaratory judgment that KRS 173.790 governs the tax rate and ability to increase and/or decrease said rate;
5. Prejudgment interest, court costs and attorneys fees, per 42 U.S.C. Section 1983;
6. That the Court certify this action to proceed as a Class Action;
7. All other relief to which the Plaintiffs and members of the class are properly entitled to receive at law or in equity.

Respectfully submitted,

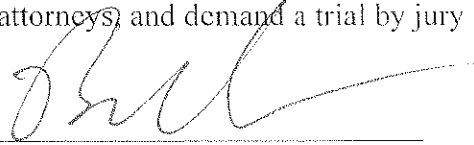


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Brandon N. Voelker  
The Voelker Firm, PLLC  
4135 Alexandria Pike, Suite 109  
Cold Spring, Kentucky 41076  
(859) 781-9100  
bnvoelker@msn.com

**JURY DEMAND**

Now come Plaintiffs, by and through their attorneys, and demand a trial by jury on all causes of action.

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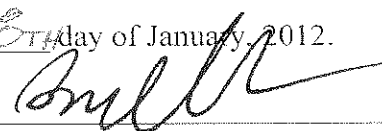
Brandon N. Voelker

VERIFICATION

Comes now Erik Hermes, Plaintiff herein, and verifies that the statements contained in the Complaint are true and correct to the best of his knowledge and belief.

  
ERIK HERMES

Sworn and subscribed to before me this 18<sup>th</sup> day of January, 2012.

  
Notary Public – State at Large, Kentucky

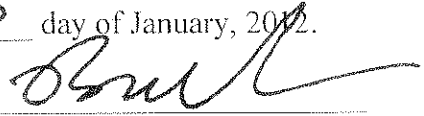
My commission expires: 10/8/15

VERIFICATION

Comes now John Roth, Plaintiff herein, and verifies that the statements contained in the Complaint are true and correct to the best of their knowledge and belief.

  
\_\_\_\_\_  
JOHN ROTH

Sworn and subscribed to before me this 18 day of January, 2012.

  
\_\_\_\_\_  
Notary Public – State at Large, Kentucky

My commission expires: 10/8/15

*EXHIBIT B*

CAMPBELL COUNTY FISCAL COURT  
CAMPBELL COUNTY,  
KENTUCKY

RESOLUTION, ORDER AND ORDINANCE

R- 42 -73

RESOLUTION, ORDER AND ORDINANCE  
ESTABLISHING THE CAMPBELL COUNTY  
PUBLIC LIBRARY DISTRICT AND  
ADDING A THREE CENT AD VALOREM  
TAX LEVY TO THE COUNTY TAX BILL  
FOR THE SUPPORT AND MAINTENANCE  
OF THE CAMPBELL COUNTY PUBLIC  
LIBRARY DISTRICT PURSUANT TO  
KRS 173.710 TO 173.890.

WHEREAS, petitions containing 12,352 signatures of duly qualified voters of Campbell County, Kentucky, were filed with the Campbell County Fiscal Court on August 3, 1978 authorizing the Campbell County Fiscal Court to establish the Campbell County Public Library District and levy a three cent ad valorem tax for the support and maintenance of the Campbell County Public Library District, and

WHEREAS, on August 7, 1978, the Campbell County Fiscal Court appointed a committee consisting of three members to verify these 12,352 signatures as duly qualified and registered voters of Campbell County, Kentucky, and

WHEREAS, the three member committee has reported to the Campbell County Fiscal Court that the signatures contained on said petitions have been verified and it has been found that said petitions contain more than 10,486 verified signatures of qualified voters of Campbell County, Kentucky, which number represents more than 51% of the number of duly qualified voters who voted in the last general election in Campbell County held on November 2, 1977, and

WHEREAS, it appears that said petitions comply with all requirements for the establishment of a county public library district as set forth in KRS 173.710 to 173.890,

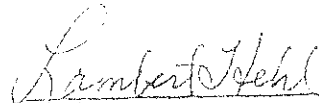
AND, THEREFORE, BE IT RESOLVED, ORDERED AND  
ORDAINED as follows:

1. A county public library district to be known  
as the Campbell County Public Library District is hereby  
established pursuant to the requirements of and authority  
provided by KRS 171.710 to 171.720, effective this 5th  
day of September, 1973.

2. Pursuant to KRS 171.714, an ad valorem tax  
levy of three cents (3¢) on each one hundred (\$100.00)  
dollars worth of property assessed for local taxation for  
the support and maintenance of said public library district  
is hereby levied on all property assessed for local taxation  
in Campbell County, Kentucky, effective immediately.

3. The Clerk of Campbell County shall add this  
three cent (3¢) ad valorem tax levy to the 1973 county tax  
bills upon receipt of a certified copy of this Order.

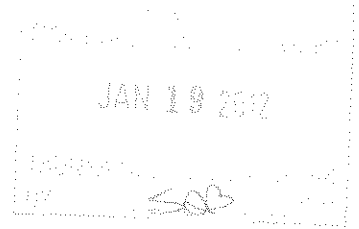
ADOPTED this 5th day of September, 1973, by the  
Campbell County Fiscal Court.

  
JUDGE

A TRUE COPY ATTEST:

  
FISCAL COURT CLERK

COMMONWEALTH OF KENTUCKY  
CAMPBELL COUNTY CIRCUIT COURT  
1st DIVISION  
CASE NO. 12-CI-89



CHARLIE COLEMAN, JOHN P. ROTH JR AND ERIK HERMES,  
ON BEHALF OF THEMSELVES AND OTHERS  
SIMILARLY SITUATED

PLAINTIFFS

V.

CAMPBELL COUNTY PUBLIC LIBRARY  
BOARD OF TRUSTEES

DEFENDANT

---

PLAINTIFFS' MOTION FOR AN ORDER TO REQUIRING THE CAMPBELL  
COUNTY LIBRARY BOARD OF TRUSTEES TO ESCROW ALL TAX PAYMENTS  
RECEIVED IN EXCESS OF \$0.30 PER THOUSAND OF ASSESSED VALUE

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Comes now the Plaintiffs, by and through counsel, and moves this Court for an Order requiring the Defendant Library to escrow all taxes collected in excess of \$0.30 per thousand of value. In support the Verified Complaint signed by the Plaintiffs is incorporated by reference herein. The issue is straightforward, KRS 173.790 requires a petition to increase and/or decrease the Defendant's tax rate. Nonetheless, the Defendant has refused to follow the applicable law. The Plaintiffs are able to show a likelihood of success on the merits and will suffer irreparable harm in that tax money unlawfully collected will be paid out with the possibility it is unable to be returned, especially since the Defendant Library's own budget shows expenditures in well excess of the taxes authorized by KRS 173.790.

Wherefore, Plaintiff would ask that this Motion be granted.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "B. Voelker", written over a horizontal line.

Brandon N. Voelker  
The Voelker Firm, PLLC

4135 Alexandria Pike, Suite 109  
Cold Spring, Kentucky 41076  
(859) 781-9100  
[bnvoelker@msn.com](mailto:bnvoelker@msn.com)

**NOTICE**

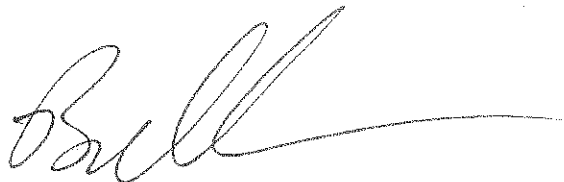
*3<sup>rd</sup>* The foregoing Motion shall come for a hearing before the Campbell Circuit Court on the  
day of January, 2012 at *9:30* am or as soon thereafter as Counsel may be heard.  
*February*

**CERTIFICATION**

I hereby certify that true accurate copy of the foregoing was been served simultaneously  
with the Complaint filed herein to the following:

Robert Jennings/Agent  
3 Whispering Woods Lane  
Alexandria, Kentucky 41001

On this 19<sup>th</sup> day of January 2012.

  
\_\_\_\_\_  
Brandon N. Voelker